



Billing Code 3410-05-P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1436

RIN: 0560-AI19

Farm Storage Facility Loan Program, Security Requirements

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Final Rule.

SUMMARY: The Commodity Credit Corporation (CCC) is amending the Farm Storage Facility Loan (FSFL) Program regulations to increase the loan amount, for which additional security or a severance agreement is required, from \$50,000 to \$100,000. We are making a related change for loans secured with collateral that does not have any resale value. The purpose of these amendments is to make the loan process easier for borrowers, especially producers who may not have additional security, but are unlikely to default on a relatively small loan. Raising the threshold for which additional security is required from \$50,000 to \$100,000 should help more small producers qualify for a loan between \$50,000 and \$100,000, and will likely reduce their cost to qualify for such a loan.

DATES: Effective Date: **[Insert date of publication in the FEDERAL REGISTER].**

FOR FURTHER INFORMATION CONTACT: Toni Williams; phone (202) 720-2270.

Persons with disabilities who require alternative means of communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION

Background

The FSFL Program provides low interest loans for producers to build or upgrade farm storage and handling facilities. FSFLs can be used for items such as drying and cooling equipment, safety equipment, and new concrete foundations, as well as for storage buildings and grain bins. The FSFL Program is a CCC program administered by the Farm Service Agency (FSA). As specified in the CCC Charter Act (15 U.S.C. 714b), the goal of the FSFL Program is to increase producer-owned storage capacity to alleviate national, regional, and local shortages in the storage of eligible commodities. Eligible commodities include grains, sugar, pulse crops, hay, honey, renewable biomass, fruits, nuts, and vegetables. Loans are available in amounts up to \$500,000 for terms of 7, 10, or 12 years. Since 2000, more than 33,000 FSFLs have been disbursed totaling \$1.8 billion. On average, about 2,100 new FSFLs are made each year, with about 16,000 loans currently outstanding. The default rate for the FSFL Program is extremely low, less than 0.1 percent.

Having on-farm storage helps producers to sell their crop at a time when the market is favorable for them, rather than being forced to sell immediately after harvest or pay for commercial storage. Producers can use on-farm storage to store livestock feed grown on-farm, rather than buying feed. On-farm storage allows producers to better serve their customers that buy commodities throughout the year, such as bioenergy facilities.

All FSFLs require security. The collateral securing an FSFL is typically the storage facility or equipment itself. The FSFL regulations in 7 CFR 1436.8, “Security for

Loan,” currently require certain levels of security depending on if the loan amount is less than or equal to \$50,000 or greater than \$50,000. Loans greater than \$50,000 or where the borrower has multiple outstanding FSFLs that total over \$50,000 require additional security. The additional security can include an irrevocable letter of credit or a lien on real estate where the facility is located, as well as a severance agreement for any existing liens on the real estate parcel on which the storage facility is located. Livestock, machinery, vehicles, and other equipment cannot be used as security for FSFL. This rule raises the threshold, from \$50,000 or less to \$100,000 for which additional security is required, which should make the loan process easier and less expensive for borrowers of loans under \$100,000. Loan applicants, not FSA, pay loan closing costs, so reducing the security requirements for certain loan amounts will eliminate the cost to applicants for obtaining letters of credit, severance agreements, appraisals, and similar documents. This will benefit producers who take out new FSFLs up to \$100,000, including some producers who may not have real estate to offer as security.

Security for Loan

This rule amends 7 CFR 1436.8, “Security for Loan,” in three ways. First, additional security will only be required for loans in excess of \$100,000, when the total aggregate outstanding FSFLs by the borrower will exceed \$100,000. The Deputy Administrator for Farm Programs or a State Committee may at any time lower the dollar threshold for which additional security is required for all FSFLs in the respective State, if such security is needed to properly secure such loans. The dollar threshold for which additional security is required cannot be less than \$50,000, and the same threshold must apply to all FSFLs in a State. Currently, all loans in excess of \$50,000 require additional

security, specifically a lien on the real estate parcel on which the storage facility is located. The value of the real estate security for the loan must be at least equal to the loan amount. For some producers, this can be a barrier to qualifying for a loan greater than \$50,000, because they do not own real estate of high enough value. Also, obtaining the lien can cost the producer about \$1,000 in legal and appraisal fees. Raising the threshold for which additional security is required to \$100,000 should help more small producers qualify for a loan between \$50,000 and \$100,000, and reduce their cost to qualify for such a loan.

Second, this rule specifies that a severance agreement from the holder of any prior lien on the real estate parcel on which the storage facility is located will not be required unless the loan is in excess of \$100,000, or the total aggregate outstanding FSFLs balance will exceed \$100,000. Currently, loans in excess of \$50,000 require a severance agreement. For loans of \$50,000 or less, in lieu of a severance agreement, the producer can provide security for the loan in other ways, specifically by increasing the down payment from 15 percent to 20 percent or by providing another form of security, such as an irrevocable letter of credit. These security alternatives can be less time consuming and less costly for the producer to obtain than a severance agreement. Raising the threshold for which a severance agreement is required should reduce costs to allow producers to qualify for a loan between \$50,000 and \$100,000.

Third, this rule specifies that additional security will not be required for loans secured by collateral without any resale value unless the loan exceeds \$100,000, or the total aggregate outstanding FSFLs balance will exceed \$100,000. The current threshold is \$50,000. Collateral without any resale value is collateral that has insufficient value and

cannot easily be removed and sold, such as, but not limited to, permanent equipment upgrades, electrical wiring, or a new concrete foundation. Again, small producers who are otherwise creditworthy may not have the means to provide additional security, particularly since items commonly owned by producers that do have resale value, such as livestock and machinery, cannot be used as additional security for FSFL. Raising the threshold to \$100,000 should help more small producers qualify for a loan between \$50,000 and \$100,000, and should reduce their cost to qualify for such a loan.

This rule also makes minor editorial changes to improve the clarity and consistency of the security requirements as specified in the regulations. For example, the language with respect to requirements for loans secured without collateral is clarified to state that only loans of \$100,000 or more will require extra security. The previous language was ambiguous and implied that all loans secured without collateral would require additional security, which is not FSA policy and therefore required clarification. References to “exceeding” a certain amount, “less than” a certain amount, or an amount “or less,” were edited to “equal to or less than” or “greater than” to be consistent within 7 CFR part 1436. A reference to bonds was removed; bonds have not been used by producers as security in many years and cannot be accepted by FSA’s current financial system.

Intended Effect

The intent of the amendments is to make the loan process for relatively small FSFLs simpler and less expensive for producers. This rule will benefit most producers who apply for a loan between \$50,000 and \$100,000, including those who do have

additional security, because the changes in this rule will reduce the time and expense required to apply for a loan. Specifically, if no severance agreement, lien on real estate, appraisal, or letter of credit is required, borrowers may be able to reduce their closing costs for the loan by about \$1,000 per loan, depending upon the facts of each situation. About a quarter of all FSFLs each year are for amounts between \$50,000 and \$100,000. The changes in this rule should help both borrowers who are building new on-farm storage and borrowers who are expanding their farm business with additional equipment or storage facilities.

The regulatory changes will allow the FSFL Program to continue to provide economic stability and reduce short-term income volatility for producers, by allowing the producer to finance on-farm storage, providing them more control over when to sell their crop. Because the FSFL Program default rate has been consistently low, and borrowers must pass a rigorous financial analysis to qualify for a loan, it is appropriate to reduce the security requirements for smaller loans. The additional security requirements will remain the same for loans above \$100,000, which account for less than 20 percent of loans in the FSFL Program, and are unlikely to be loans made to small producers. Overall, the intent of this rule is to provide an increased opportunity for access to credit for small producers, without increasing the risk of loan defaults.

Flexibility in Implementation

This rule provides flexibility for CCC to require additional security for loan amounts less than \$100,000 in the future, if needed to protect CCC's interests. As specified in this rule and in the current regulations, the approving State Committee, on a

state-wide basis, may require security on smaller loans, if it is determined that security is needed to protect CCC's interests, but not on loans less than \$50,000. Also, FSA's Deputy Administrator for Farm Programs or a State Committee, for all FSFLs in a State, may at any time, lower the dollar threshold for which additional security is required for all loans in a State, but not for loans less than \$50,000. This means that, for example, if the default rate rises or if credit market conditions change, FSA would have the ability to lower the security threshold for loans at the State or the national level.

This rule does not require every State to use the new higher thresholds for security. We anticipate that some State committees will retain the more conservative threshold of \$50,000, particularly for loans that are secured with collateral that has been determined to not have any resale value.

Notice and Comment

In general, the Administrative Procedure Act (5 U.S.C. 553) requires that a notice of proposed rulemaking be published in the Federal Register and interested persons be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation. Regulations for this program are exempt from the notice and comment requirements in 5 U.S.C. 553, as specified in section 1601(c) of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246, the 2008 Farm Bill), which allows that the regulations be promulgated and administered without regard to the notice and comment requirements in 5 U.S.C. 553.

Effective Date

The Administrative Procedure Act (5 U.S.C. 553) provides generally that before rules are issued by Government agencies, the rule must be published in the Federal Register, and the required publication of a substantive rule is to be not less than 30 days before its effective date. However, one of the exceptions is that section 553 does not apply to rulemaking that involves a matter relating to loans. Therefore, to provide greater access to capital for small farmers as soon as possible before the 2014 planting season, this final rule is effective when published in the Federal Register.

Executive Order 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this final rule as not significant under Executive Order 12866 and, therefore, OMB was not required to review this final rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because CCC is not required by any law to publish a proposed rule for public comments on this rule.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and the FSA regulations for compliance with NEPA (7 CFR 799 and 7 CFR part 1940, subpart G). The proposed changes to the FSFL program were analyzed and evaluated in a Programmatic Environmental Assessment and subsequent Finding of No Significant Impact (74 FR 71674) after the 2008 Farm Bill. The scope of that environmental review included provisions that have already been implemented as well as those provisions proposed in this rule. FSA has determined that these provisions will not have a significant impact on the quality of the human environment either individually or cumulatively. Therefore, no Environmental Assessment or Environmental Impact Statement will be prepared.

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons specified in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. This rule will not have retroactive effect. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by

law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 imposes requirements on the development of regulatory policies that have Tribal implications or preempt Tribal laws. The policies contained in this rule do not, to our knowledge, impose substantial unreimbursed direct compliance costs on Indian Tribal governments, have Tribal implications, or preempt Tribal law. USDA continues to consult with Tribal officials to have a meaningful consultation and collaboration on the development and strengthening of USDA regulations. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as Webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State,

local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996, (Pub. L. 104-121, SBREFA). Therefore, CCC is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Accordingly, this rule is effective on the date of publication in the Federal Register.

Federal Assistance Programs

The title and number of the Federal Domestic Assistance Program in the Catalog of Federal Domestic Assistance to which this rule applies is the Farm Storage Facility Loans--10.056.

Paperwork Reduction Act

The regulations in this rule are exempt from requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 1601(c)(2) of the 2008

Farm Bill, which provides that the programs in Title I of the 2008 Farm Bill be administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

FSA and CCC are committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 1436

Administrative practice and procedure, Loan programs—agriculture, Penalties, Price support programs, Reporting and recordkeeping requirements.

For the reasons discussed above, CCC amends 7 CFR part 1436 as follows:

PART 1436—FARM STORAGE FACILITY LOAN PROGRAM REGULATIONS

1. The authority citation for part 1436 continues to read as follows:

Authority: 7 U.S.C. 7971 and 8789; and 15 U.S.C. 714–714p.

2. Amend §1436.8 as follows:

- a. Revise paragraphs (b) introductory text, (c) introductory text, (c)(2), and (i),

- b. In paragraph (b)(1), remove the word “Agrees” and add the word “Agree” in its place,

- c. In paragraph (b)(2), remove the words “credit, bond, or other form of security, as” and add the words “credit or other form of security” in its place,

d. In paragraph (c)(1), at the end, remove the period and add the punctuation and word “; and” in its place.

The revisions read as follows:

§1436.8 Security for loan.

* * * * *

(b) For loan amounts equal to or less than \$100,000, or when the aggregate outstanding FSFLs balance will be equal to or less than \$100,000, CCC will not require a severance agreement from the holder of any prior lien on the real estate parcel on which the storage facility is located. However, the Deputy Administrator, Farm Programs, or a State Committee may, at their discretion, require a severance agreement for loan amounts greater than \$50,000 or less than \$100,000 for all FSFLs in the State, if deemed necessary to protect the interests of CCC. If no severance agreement is provided, then the borrower must:

* * * * *

(c) For loan amounts equal to or less than \$100,000, or when the aggregate outstanding FSFLs balance will be equal to or less than \$100,000, CCC will not require a lien on the real estate parcel on which the farm storage facility is located. However, the Deputy Administrator, Farm Programs or a State Committee may, at their discretion, require a lien in the form of a real estate mortgage, deed of trust, or other security instrument approved by USDA's Office of the General Counsel for loans greater than \$50,000 or less than \$100,000 for all FSFLs in the State, if deemed necessary to protect the interests of CCC. Liens are required for all loans greater than \$100,000. All liens must meet the following conditions:

* * * *

(2) The real estate security for the loan must be at least equal to the loan amount;
and

* * * *

(i) For loan amounts equal to or less than \$100,000, or when the aggregate outstanding FSFLs balance will be equal to or less than \$100,000, and secured by collateral without any resale value, as determined by CCC, additional security will not be required. However, the Deputy Administrator, Farm Programs or a State Committee may, at their discretion, for all FSFLs in the State, require additional security for loan amounts greater than \$50,000 or less than \$100,000 that are secured by collateral without any resale value if deemed necessary to protect the interests of the CCC.

* * * *

Signed on March 4, 2014.

Juan M. Garcia,
Administrator,
Farm Service Agency, and
Executive Vice President,
Commodity Credit Corporation.

[FR Doc. 2014-05101 Filed 03/07/2014 at 8:45 am; Publication Date: 03/10/2014]